

(2) The submission of lists of recommended nominees by labor organizations must be in accordance with timelines and requirements set forth by the Secretary, who may provide for consultation in order to obtain further information about a recommended nominee. The ability of the Secretary to appoint NSLRB members may not be delayed or otherwise affected by the failure of any labor organization to provide a list of nominees that meets the timeframe and requires established by the Secretary.

(e) *Appointment of additional non-Chair NSLRB members.* If the Secretary determines that additional members are needed, he or she may, subject to the criteria set forth in paragraph (b)(2) of this section, appoint the additional members according to the procedures established by paragraph (d) of this section.

(f) A Board vacancy will be filled according to the procedure used to appoint the member whose position was vacated.

(g)(1) The Board will establish procedures for the fair, impartial, and expeditious assignment and disposition of cases, including standards for asserting or declining jurisdiction.

(2) To the extent practicable, the Board will use a single, integrated process to address all matters associated with a negotiations dispute, including unfair labor practices, negotiability disputes, and bargaining impasses. The Board may, pursuant to its regulations, use a combination of mediation, factfinding, and any other appropriate dispute resolution methods to resolve all such disputes at the earliest practicable time and with a minimum administrative burden.

(3) A vote of the majority of the Board (or a three-person panel of the Board) will be final. A vacancy on the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The vote of the Chair will be dispositive in the event of a tie.

(h) Decisions of the Board are final and binding.

§ 9901.908 Powers and duties of the Board.

(a) Section 9902(m)(6) of title 5, U.S. Code, requires that the labor relations system established under this subpart provide for an independent third party review of labor relations issues set out in § 9901.908(b), including defining the third party to provide the review. Notwithstanding § 9901.907 and pending establishment of the Board, the Secretary, in consultation with the Director, may designate a third party to exercise the authority of the Board in accordance with this subpart.

(b) The Board may to the extent provided in this subpart and in accordance with regulations prescribed by the Board—

(1) Conduct investigations and hearings, and resolve allegations of unfair labor practices, including allegations concerning strikes, work stoppages, slowdowns, and picketing, or condoning such activity by failing to take action to prevent or stop such activity;

(2) Resolve issues relating to the scope of bargaining and the duty to bargain in good faith under § 9901.917;

(3) Resolve exceptions to arbitration awards. In doing so, the Board will conduct any review of an arbitral award in accordance with 5 U.S.C. 7122(a) as modified in § 9901.923;

(4) Resolve negotiation impasses in accordance with § 9901.920;

(5) Conduct *de novo* review involving all matters within the Board's jurisdiction; and

(6) Have discretion to evaluate the evidence presented in the record and reach its own independent conclusions with respect to the matters at issue, but in no case may the Board issue status quo ante remedies, where such remedies are not intended to cure egregious violations of this subpart or where such an award would impose an economic hardship or interfere with the efficiency or effectiveness of the Department's mission or impact national security.

(c) In any case in which the Board or its authorized agent, in the Board's or the agent's unreviewable discretion, declines to adjudicate any unfair labor practice allegation(s) because the allegation(s) was not timely filed, fails to

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state an unfair labor practice, or for other appropriate reasons, the Board or the agent, as applicable, will provide the person making the allegation(s) a written statement of the reasons for such determination.

(d) Upon the request of a DoD Component or a labor organization concerned, the Board may issue guidance for matters within its jurisdiction.

(e) The Board's decisions will be written and published.

§ 9901.909 Powers and duties of the Federal Labor Relations Authority.

(a) To the extent provided in this subpart (pursuant to the authority in 5 U.S.C. 9902), the Federal Labor Relations Authority, in accordance with conforming regulations prescribed by the Authority, may—

(1) Determine the appropriateness of bargaining units pursuant to the provisions of § 9901.912;

(2) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer 5 U.S.C. 7111 (relating to the according of exclusive recognition to labor organizations), which is not waived for the purpose of this subpart;

(3) Resolve disputes regarding the granting of national consultation rights; and

(4) Upon request of a party, review only those Board decisions on—

(i) Unfair labor practices, except those issued under § 9901.908(c);

(ii) Arbitral awards under § 9901.908; and

(iii) Negotiability disputes.

(b) In any matter filed with the Authority, if the responding party believes that the Authority lacks jurisdiction, that party will timely raise the issue with the Authority and simultaneously file a copy of its response with the Board in accordance with regulations established by the Authority. The Authority will promptly transfer the case to the Board, which will determine whether the matter is within the Board's jurisdiction. If the Board determines that the matter is not within its jurisdiction, the Board will return the matter to the Authority for a decision

on the merits of the case. The Board's determination with regard to its jurisdiction in a particular matter is final and not subject to review by the Authority. The Authority will promptly decide those cases that the Board has determined are within the jurisdiction of the Authority.

(c)(1) To obtain review by the Authority of a Board decision, a party will request a review of the record of a Board decision by the Authority by filing such a request in writing within 15 days after the issuance of the decision. A copy of the request will be served on all parties. Within 15 days after service of the request, any response will be filed. The Authority will establish, in conjunction with the Board, standards for the sufficiency of the record and other procedures, including notice to the parties. The Authority will accept the findings of fact and interpretations of this part made by the Board and sustain the Board's decision unless the requesting party shows that the Board's decision was—

(i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(ii) Caused by harmful error in the application of the Board's procedures in arriving at such decision; or

(iii) Unsupported by substantial evidence.

(2) The Authority will complete its review of the record and issue a final decision within 30 days after receiving the party's response to such request for review. If the Authority does not issue a final decision within this mandatory time limit, the Authority will be considered to have denied the request for review of the Board's decision, which will constitute a final decision of the Authority and is subject to judicial review in accordance with 5 U.S.C. 7123.

(d) Judicial review of any Authority decision is as prescribed in 5 U.S.C. 7123(a). The references in 5 U.S.C. 7123(a) to other provisions in 5 U.S.C. chapter 71 are considered to be references to those particular provisions as modified by this subpart.

§ 9901.910 Management rights.

(a) Subject to paragraphs (b) through (e) of this section, nothing in this subpart may affect the authority of any